

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

OCT -6 AM 11:25

COOK INCORPORATED,

Plaintiff,

v.

ENDOLOGIX, INC.,

Defendant.

Civil Action No.:

Judge:

1 : 09-cv- 1248 WTL-TAB

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cook Incorporated (hereinafter "Cook" or "Cook Inc."), through counsel, brings this complaint against Defendant Endologix, Inc. (hereinafter "Defendant" or "Endologix"), as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.
2. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b)

PARTIES

4. Cook is now, and at all times mentioned in this Complaint has been, an Indiana corporation with a principal place of business of 750 Daniels Way, Bloomington, Indiana 47402.
5. Defendant Endologix is a corporation of the State of Delaware, having its principal place of business of 11 Studebaker, Irvine, California 92618.

6. Defendant Endologix manufactures delivery systems sold under the name of the IntuiTrak system in California, and sells and supplies the same throughout the United States, including the State of Indiana and this District, and abroad.

7. Defendant Endologix manufactures stent grafts sold under the name of the Powerlink stent graft in California, and sells and supplies the same throughout the United States, including the State of Indiana and this District, and abroad.

THE PATENTS IN SUIT

8. On May 26, 1998, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,755,777 ("the '777 Patent"), entitled "Expandable Transluminal Graft Prosthesis for Repair of Aneurysm." Cook is the owner of the '777 Patent. A copy of the '777 Patent is attached as Exhibit A to this Complaint.

9. On July 30, 1991, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,035,706 ("the '706 Patent"), entitled "Percutaneous Stent and Method for Retrieval Thereof." On November 3, 1992, the United States Patent and Trademark Office duly and legally issued a Certificate of Correction for the '706 Patent. Cook is the owner of the '706 Patent. A copy of the '706 Patent, including the Certificate of Correction, is attached as Exhibit B to this Complaint.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,755,777

10. Endologix has been and still is infringing claims 1 and 11 of the '777 Patent by making, using, selling, importing, exporting or offering to sell in the United States, delivery systems, including products sold under the name of the IntuiTrak system, which embody, incorporate or otherwise practice the claimed inventions.

11. As a direct and proximate result of Endologix's infringement of the '777 Patent, Cook has been and continues to be damaged in its business and property, including the loss of revenues in an amount to be determined at trial.

12. Endologix has caused damage by its acts of infringement of the '777 Patent, and Endologix will cause additional damage and irreparable harm unless the Court enjoins Endologix from continuing such infringing acts and initiating such acts in the future.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,035,706

13. Endologix has been and still is infringing claims 6 and 12 of the '706 Patent by making, using, selling, importing, exporting or offering to sell in the United States, stent grafts, including products sold under the name of the Powerlink stent graft, which embody, incorporate or otherwise practice the claimed inventions.

14. As a direct and proximate result of Endologix's infringement of the '706 Patent, Cook has been and continues to be damaged in its business and property, including the loss of revenues in an amount to be determined at trial.

15. Endologix has caused damage by its acts of infringement of the '706 Patent, and Endologix will cause additional damage and irreparable harm unless the Court enjoins Endologix from continuing such infringing acts and initiating such acts in the future.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Cook respectfully requests that this Court enter judgment against Defendant Endologix, Inc. that:

- (a) Endologix has infringed the '777 Patent and the '706 Patent;
- (b) Endologix, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with it, be preliminarily and/or permanently enjoined

from infringing the '777 Patent and the '706 Patent, during the remaining term thereof, pursuant to 35 U.S.C. § 283;

(c) Endologix pay damages adequate to compensate for the infringement of the '777 Patent and the '706 Patent, including interest and costs, pursuant to 35 U.S.C. § 284; and

(d) Cook is granted such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff Cook Incorporated hereby demands a trial by jury on all issues triable of right by jury.

Dated: October 5, 2009

Respectfully submitted,



Richard A. Kaplan
Bradley G. Lane
Kelly Eberspecher
Danielle A. Phillip
BRINKS HOFER GILSON & LIONE
NBC Tower - Suite 3600
455 North Cityfront Plaza Drive
Chicago, Illinois 60611
(312) 321-4200

Randy L. Campbell
BRINKS HOFER GILSON & LIONE
Capital Center South - Suite 1100
201 North Illinois Street
Indianapolis, Indiana 46204
(317) 636-0886

Attorneys for Plaintiff,
COOK INCORPORATED